

MONTANA TRIAL LAWYERS ASSOCIATION

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JUSTICE FOR ALL

BILL NO. SB 111**Officers:**

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RE: SB 111

Mr. Chair, Members of the Senate Transportation Committee;

The Montana Trial Lawyers Association (MTLA) stands in opposition to SB 111 for numerous reasons. First of all, we support persons and entities being responsible and accountable for their actions. Persons should purchase mandatory auto insurance, but this bill does nothing to increase responsibility and only punishes persons who are injured by others' negligent acts. This bill rewards persons who have negligently harmed others, and it provides a **windfall for insurers** - they collect premiums to pay for the damages their insureds cause, but do not have to pay out for those same damages.

I purchase insurance not only to protect myself, but also to help compensate those that I injure due to my own negligence. This bill would relieve me of full responsibility for my actions, and it relieves the insurer I pay premiums to from its obligations to compensate those I injure. That is wrong.

This bill is also unduly broad in that "any civil action arising out of the operation of a motor vehicle" (p. 1, line 11) comes under its prohibitions - **negligent manufacturers would be completely let off the hook**. For example, if an uninsured driver was unfortunate enough to be a victim of **defective Firestone tires** that are still on many older vehicles on the roads, she would be precluded under this bill from collecting her full compensation, and Firestone would be protected from full accountability for its negligence, including being protected from any punitive damages, which may be included in the noneconomic loss definition.

What about the tire dealer who negligently strips the lug nuts and a wheel falls off at 75 miles an hour? Why should the dealer not be held fully responsible for the harm they caused? What is the connection between a person not purchasing insurance and a negligent manufacturer or repair business? I fail to see how the public interest is served by protecting wrongdoers from being held fully responsible and accountable for their actions.

As another example of the overly broad impact of this bill, consider another scenario. A young stay at home mom who is uninsured under this bill (see page 2, lines 1-6) does the right thing, and has parked the car until she can afford insurance. She is riding her bicycle and a negligent driver hits her. Under SB 111, she is prohibited from receiving noneconomic damages because SB 111 covers "any civil action arising out of the operation of a motor vehicle" (p. 1, line 11) - even if the uninsured isn't even in their uninsured vehicle. The same prohibition applies to her if she is riding in someone else's vehicle.

What about the couple that jointly own their vehicle, but just one of them is responsible for paying the bills? What if money is tough, the bill payer skips a payment and let's the insurance lapse, all unbeknownst to the other spouse. The spouse in the know feels bad that he can't provide all the money the family needs, but as the months go on, with ever more demands for ever less available money, it becomes all too easy to forget the insurance isn't in effect. Under SB 111, the unknowing spouse would suffer the same arbitrary consequences as the knowing spouse.

This bill violates an uninsured person's rights under Article II, Section 16 of our Montana Constitution which provides that "Courts of justice shall be open to **every person**, and speedy remedy afforded for **every injury of person**, property or character." What is the compelling state interest that might justify denial of our fundamental constitutional right to full legal redress? There are other bills that increase penalties for uninsured drivers, and last session the legislature enacted Section 6-1-6-157, effective July 1, 2011 that truly addresses the problem of uninsured drivers, without depriving Montanans, who are injured through no fault of their own, of their Constitutional rights.

Montana is at the bottom of the barrel in terms of income. Montana's families and elderly are currently facing budget crunches. Many families, facing drastic lack of funds, are forced to closely scrutinize their budgets and prioritize on their limited incomes. People want to be able to pay all of their bills. However, when faced with either providing food, clothing and shelter for their children, unfortunately liability insurance for their car is understandably pushed further down that list. In most of Montana, driving is a necessity, not a luxury.

This is not new legislation across the country, but only four states (California, Louisiana, Michigan and New Jersey) have adopted it since 1998. Some twenty states rejected attempts to pass such legislation in the 1999-2001 period, and the 1999 and 2001 Montana Legislatures, rejected this same bill, in the judiciary committees. There is **no evidence that the number of uninsured drivers has decreased** as a result of such legislation. And, there is **no evidence that insurance rates have been reduced** as a result of such bills. The passage of this legislation is not going to cause a rush to purchase liability insurance. Even if citizens are actually aware of this bill, a big if, people are not going to re-prioritize liability insurance above food and shelter. This will only punish families and the elderly that are not going to be able to pay for the insurance at that time.

I would also like to point out that taxpayers are the one's who make up the difference. For instance, if the uninsured person is indigent, the cost of permanent disability is placed in the hands of the taxpayers, while insurance companies and the at-fault defendant are let off the hook. Additionally, this bill might make some sense if it punished uninsured drivers who have previously injured others, but it punishes not just those drivers but all uninsured drivers, including those whose failure to be insured injured no one.

The state of Louisiana passed legislation similar to this. However a difference in the bills is that Louisiana's bill contained a mandatory reduction in premium rates. Premiums were reduced in September of 1998 but in November of that same year, insurance companies were seeking rate increases from their Insurance Commission. Insurance companies may try to sell this by saying that this legislation will lower our premium rates, however, there is no guarantee that this

will happen. **The one guarantee of this bill is that insurers benefit** - they won't have to pay out for damages that their insureds have paid premiums for.

I hope that this committee takes a close look at the possible ramifications of this legislation. We are only punishing those that are in the unfortunate position of not being able to pay for liability insurance for their car to a very severe degree - these people would not be able to seek non-economic damages for an accident that is NOT their fault. This bill says it is a worse offense to be uninsured than it is to cause harm to an innocent driver. This bill says it is better to **reward insurance companies** than to compensate an uninsured driver injured through no fault of their own. This bill is bad public policy, it does not help the problem of uninsured drivers, but only **rewards insurance companies**.

Now some of you may be wondering what uninsured drivers have to do with limiting civil actions by drunk drivers or those driving under the influence. Well, wonder no more, they have nothing to do with each other, lines 14-17 on page 1 are on this bill solely to draw votes for the bill by associating the most despised, disfavored group this session - drunk drivers. The 2001 version of this bill had as its token despised, disfavored group persons who were committing felonies or fleeing from the scene of a felony.

Noneconomic damages are intended to compensate victims for their very real losses, beyond economic damages such as medical bills and lost wages. Such losses generally are those that negatively affect one's quality of life. In legal terms, noneconomic damages include, but are not limited to, permanent disfigurement, permanent disability, loss of a limb, loss of eyesight, loss of sexual functions, loss of fertility, and a lifetime of physical and emotional pain.

By treating economic and noneconomic damages differently, we arbitrarily create a two-tiered legal system. **Caps and prohibitions of noneconomic damages unfairly discriminate against those who either earn a lower income or have no income at all - women, children & the elderly.**

For instance, if a bank executive that makes \$150,000 a year and a stay-at-home mom both become permanently disabled because of an injury from the same negligent driver, the banker may be able to recover over a \$1 million for lost wages. However, the stay-at-home mom has no income, so she has no lost wages. Most of her compensation will come from noneconomic damages, which are capped under SB 111. This is true of **women** generally. The federal government reports that for comparable work, women earn only 75% of a man's salary. Thus, men would be able to recover proportionately more than women for the same injury, making the noneconomic damages award even more important to women.

Despite having no impact on health care or insurance costs, noneconomic damages have a tremendously negative affect on the permanently injured, especially **children**. Children who suffer permanent brain damage and other catastrophic injuries may live a normal life span, but their quality of life is anything but normal. Because they usually have no jobs, it is virtually impossible to recover for lost wages. Also, no one can accurately predict all of the medical expense that may be necessary to care for a child who lives with severe injuries for many years. When those costs arise, some children and their families must rely on the noneconomic damages they received from their lawsuit.

SB 111 caps awards for injuries to children in two devastating ways. First, those 16 to 18 year olds who own an uninsured vehicle will be banned from

receiving noneconomic damages. Second, an uninsured parent whose child is killed in an auto collision (whether they are in the uninsured vehicle, another vehicle, or just riding their bike) is **the party** to a civil action (page 1, line 11) for the wrongful death of their child – it is **only** the parents' action. SB 111 would prohibit the parent from receiving the only substantial damages they have for the devastating loss of their child – their noneconomic damages for emotional distress and loss of companionship.

Senior citizens often have no wage income, but are trying to live out their golden years on savings and social security. If they are injured by a drunk driver, they likely will not be able to recover for lost wages. The overwhelming majority of their compensation would come from noneconomic damages. By defining a person's "worth" in purely economic terms, prohibitions on noneconomic damages devalue older Montana citizens.

As with most so-called "tort reforms", limiting the jury's ability to award noneconomic damages based upon the facts in individual cases is not only arbitrary and unfair, it's wrong. Government should not pass legislation that limits the value on someone's worth merely on their occupation, gender or age.

This bill also encourages insurance companies to increase claims handling and litigation costs. Page 1, lines 22-24 provides an opportunity for insurers to prove violations, even if the injured person has not been convicted of the uninsured or alcohol offenses. As preparation for that, the investigation of the claim will now include an investigation of whether the person was uninsured at the time of the injury or death, and if so, then an investigation of whether the person might meet the exceptions set out on page 2, lines 1-6, or maybe the claims examiner will just skip that part. Or, will adjusters use this knowledge to discourage injured persons from pursuing claims? The general rule is that "evidence that a person was or was not insured against liability is not admissible upon the issue of whether the person acted negligently or otherwise wrongfully." Rule 411, MT Rules Of Evidence. SB 111 says (page 1, lines 18-24) that the insurer now gets to put in front of the jury whether the injured person had liability insurance. But this only changes for the injured person, if the injured person asks if the negligent driver has liability insurance, the insurer will object.

SB 111 punishes uninsured drivers for accidents in which they are not at fault, deprives Montanans of their constitutional rights, and disproportionately and adversely affects women, children and the elderly. SB 111 does absolutely nothing to solve the problem of uninsured drivers. Again, SB 111 is simply a **windfall for insurers** – they collect the premiums and don't have to fully pay for the harm their insureds cause.

Thank you for your consideration.



Al Smith
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